

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL DRAWBAUGH,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 11-300 Erie
)	
ED RENDELL,)	
)	
Defendant.)	

MEMORANDUM ORDER

Plaintiff Michael Drawbaugh filed a motion to proceed *in forma pauperis* on December 6, 2011. On December 12, 2011, the motion was granted and Plaintiff's Complaint was filed and referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Magistrate Judge Baxter's December 12, 2011 Order explained that "Plaintiff having been granted leave to prosecute *in forma pauperis*, pursuant to the Prison Litigation Reform Act, the Superintendent/Warden of the institution where Plaintiff is incarcerated is directed to remit from the prisoner's account, in monthly installments, the full \$350.00" [ECF#12]. The Order further clearly explained: [e]nclosed is a copy of the form Authorization which Plaintiff is directed to execute and return to the Clerk of Court or withdraw this action by January 2, 2012." Attached to Magistrate Judge Baxter's December 12, 2011 Order was the Authorization form referenced by Magistrate Judge Baxter in her Order.

Plaintiff then wrote a letter to Magistrate Judge Baxter which we treated as an Objection to Magistrate Judge Baxter's December 12, 2011 Order [ECF #8]. In his "Objection," Plaintiff argued that to the extent that the Order required him to pay the \$350.00 filing fee, the

requirement violated his constitutional rights because he is an indigent plaintiff who already is having twenty percent (20%) deducted from his pay such that he only makes \$15.36 a month. Objection, pp. 1-2. Plaintiff also requested that if the fee is not waived, that he be added as a plaintiff in Maines v. Rendell, 11-cv-70. Id.

We reviewed Plaintiff's "Objection," and in a Memorandum Opinion filed on January 12, 2012, concluded that Magistrate Judge Baxter's December 12, 2011 Order followed the filing fee payment plan mandated by 28 U.S.C. § 1915(b)(1) and did not violate Plaintiff's rights under the United States Constitution [ECF#10]. We further concluded that to the extent Plaintiff wanted to participate as a plaintiff in any case, he needed to file such a request on the docket of said case. On the basis of these findings, we ordered that Plaintiff's "Objection" to Magistrate Judge Baxter's December 12, 2011 Order was denied, that Plaintiff was directed to execute the form Authorization sent to him by Magistrate Judge Baxter with her December 12, 2011 Order or to withdraw this action no later than February 3, 2012, and that Plaintiff's request to be added as a plaintiff in Maines v. Rendell, 11-cv-70E, was denied without prejudice to Plaintiff to properly move to be added as a plaintiff in that case.

Plaintiff did not file the Authorization form with the Clerk by February 3, 2012. Thereafter, on March 15, 2012, Magistrate Judge Baxter issued an Order which explained that "[t]o date, Plaintiff has failed to return this form to the Clerk's office, which is required before the Court issues a service order in this case," and ordered "that if Plaintiff intends to proceed with this action, he must, on or before April 5, 2012, sign and file the Notice and Authorization form attached to this Court's Order granting Plaintiff in forma pauperis status, a copy of which is enclosed with this Order. Failure to file the Notice and Authorization form within such time

will result in a recommendation that this case be dismissed for failure to prosecute” [ECF #11].

On April 24, 2012, Magistrate Judge Baxter filed a Report and Recommendation in which she explained that Plaintiff had failed to file the required Notice and Authorization form with the Clerk on or before April 5, 2012, and recommended that the Plaintiff’s Complaint be dismissed for Plaintiff’s failure to prosecute [ECF#12]. The parties were allowed fourteen (14) days from the date of service to file objections.

On May 3, 2012, the Court received Plaintiff’s “Objections to Report and Recommendation by Magistrate Judge’s” [ECF#13]. In his Objections, Plaintiff asserts:

I’ve taken all steps to be included in this Class Action Civil Suit against ED Rendell, Jeffrey Beard, DOC Secretary of PA, and Michael Curley, Superintendent of Muskegan Michigan State Prison.

As you[‘re] well aware my in forma pauperis was Granted Dec. 12 2011. Therefore when only ED Rendell’s name appears as the only Defendant. That is 100% incorrect on this Civil Action that is clearly a Class Action Suit. I am indigent and can’t afford the Western District of Pennsylvania’s filing fee for above Civil Action.

Nor would I want to pay when all the Defendants who the case is against isn’t even listed. Since I can’t afford filing fee of Class Action Civil Suit, which clearly is a Class Action Case.

Do what you Pennsylvania Judges do to all indigent Inmates who clearly have Merit for Relief, as I do. So do what you[‘re] going to do anyway because a[n] indigent Person in Pennsylvania doesn’t stand a Chance in Hell with the Corrupt Doc System as well as all the PA. Courts.

Objections, p. 1.

Contrary to Plaintiff’s assertion, he has not taken the **one** step that he is required to do in order to “prosecute” his claim, even though he has been ordered to do so three times, that being to file the Authorization form attached to this Order as Exhibit “1.”

After de novo review of the pleadings and documents in the case, together with the report and recommendation and objections thereto, the following Order is entered:

AND NOW, this 10th day of May, 2012, it is hereby ORDERED, ADJUDGED and DECREED that the Report and Recommendation of Magistrate Judge Baxter [ECF#12], dated April 24, 2012, is adopted as the Opinion of this Court.

It is further hereby ORDERED, ADJUDGED and DECREED that Plaintiff Michael Drawbaugh's Complaint is DISMISSED with prejudice. The Clerk of Court is directed to close this case.


MAURICE B. COHILL, JR.
United States District Judge

cc: Susan Paradise Baxter, U.S. Magistrate Judge
Michael Drawbaugh, *pro se*